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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,680	09/28/2001	James R. Hornsby	6881.03	5486
42173	7590	03/01/2006		
LAW OFFICE OF RICHARD B. KLAR			EXAMINER	
28 East Old Country Road			SUHOL, DMITRY	
Hicksville, NY 11801			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SJP

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/966,680	HORNSBY ET AL.	
	Examiner	Art Unit	
	Dmitry Suhol	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 December 2005.
- 2a) This action is **FINAL**.                                   2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 22-27,32-38 and 41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 27 and 36 is/are allowed.
- 6) Claim(s) 22-26,32-35,37,38 and 41 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

<ol style="list-style-type: none"> <li>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.</li> </ol>	<ol style="list-style-type: none"> <li>4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.</li> <li>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6) <input type="checkbox"/> Other: _____.</li> </ol>
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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 22-23, 25-26, 32-35, 37-38, 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lebensfeld '166 in view of Mathieu et al '486 and Hara '368. Lebensfeld discloses an interactive amusement device capable of a variety of scenarios and using a multiple of different accessories (col. 4, lines 56-62), containing most of the elements of the claims including with reference to claims 22, 25, 32 and 37, a body (fig. 4, element 10), at least two transport elements (features carried by the body) movably connected to a body (fig. 1, legs), at least two arms movably connected to a body (fig. 1, elements 47 and col. 7, lines 31-36), a microprocessor (figure 6, element 60). Data providing changes for at least two functions, as required by claim 32, is taught in col. 9, lines 35-43 with changes being speed of functions is described in col. 6, lines 26-28 where single shot, semi-automatic shooting and automatic shooting is clearly a speed of a shot function. Movement of the device as required by claim 22, 25, 37 is described in col. 9, lines 49-54. Control switches, as required by claim 34, are described in col. 5, lines 52-56. At least two couplings, as required by claim 38, are described in col. 7, lines

30-39. Defense capabilities, as required by claims 22, 25 and 37, are described in col. 6, lines 31-34 (i.e. different hit values). Regarding sound, as required by claim 41, such limitations are described in col. 9, lines 55+.

Although Lebensfeld et al discloses most of the elements of the claims the reference fails to teach a motor associated with a body and coupled to two transport elements as required by claims 25, 32 and 37, a wireless receiver associated with a body as required by claims 25 and 32, a unit wireless transmitter associated with a body and coupled with a microprocessor as required by claims 25 and 32, a remote wireless transmitter operably coupled with a wireless receiver as required by claims 25 and 32, a remote wireless transmitter operably coupled with a wireless receiver as required by claims 25 and 32. However, Mathieu discloses an interactive amusement device like that of Lebensfeld, which teaches a motor associated with a body and coupled to two transport elements (fig. 6, elements 42), a wireless receiver associated with a body (fig. 8, element 64), a unit wireless transmitter associated with a body and coupled with a microprocessor (figure 1, element 20), a remote wireless transmitter operably coupled with a wireless receiver (figure 1, element 46). Therefore it would have been obvious in view of Mathieu, to manufacture the device of Lebensfeld with the above mentioned features for the purpose of providing a remote controlled device that can simulate a "battle" scenario.

Regarding a swipe card reader and associated swipe card and card game information displayed on the face of the swipe information card, as well as, device actuation information, Hara discloses a toy apparatus which teaches that it is known to

provide toys with a card reader (3) and associated swipe card (1) to modify/enhance character functions, where the swipe cards contain both card game information and device actuation information (cols. 2-3, lines 58+ and 1-16, respectively). Therefore it would have been obvious to utilize swipe cards and associated card reader in the device of Lebensfeld to modify character parameters in the backpack, especially since Lebensfeld clearly intends for his toys to have characteristics which may be modified (col. 9, lines 35-42).

Regarding an on/off switch as required by claim 35, it would have been obvious to include such a switch since Lebensfeld clearly encompasses the use of a variety of switches in col. 5, lines 54-56 and since the examiner takes official notice that the use of on/off switches is conventional in the art in order to save power and durability of the toy.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lebensfeld '166, Mathieu et al '486 and Hara '368, as stated above, and further in view of Mowrer et al '716. Lebensfeld, as modified by Mathieu and Hara, fails to explicitly teach armor configured to be attachable to a body, as required by claim 24. However, Mowrer discloses a sound producing amusement device which can be embodied as any type of figure which teaches that it is known to provide armor which is attachable to the body of the device (col. 2, lines 61-63). Therefore it would have been obvious to incorporate armor attachable to a body portion with the device of Lebensfeld, as modified by Mathieu and Hara, for the purpose of adding a variety of ornamental surface details and interest to the user.

***Allowable Subject Matter***

Claims 27 and 36 are allowed.

***Response to Arguments***

Applicant's arguments filed 12/9/2005 have been fully considered but they are not persuasive. Applicants argue that Lebensfeld and Mathieu fail to teach or suggest the usage of a swipe card reader. In response the examiner points out that Hara is relied for such a teaching.

Applicants further argue that the combination of Lebensfeld and Mathieu fail to teach an amusement device where movement and a defense function are activated and that the portions of Lebensfeld pointed to by the examiner as discussing a defense function are not a defense function. In response the examiner directs the applicants attention to the above rejection dealing with movement and defense and points out that the examiner has equated the Lebensfeld hit point values as taught in col. 6, lines 31-34 to read on a broad limitation of a defense function since the hit values indicate a level of defense. In other words if a hit scores 2 points versus a possible 4 point, such would indicate a higher level of defense.

Applicants further argue that Hara fails to teach a swipe card reader for activating or enhancing at least two functions of the device where the functions comprise movement and a defense. In response the examiner points out that such functionality and enhancement are already disclosed by Lebensfeld and Hara is merely relied upon

to teach the use of a swipe card reader and associated swipe card to enhance functionality of an amusement device.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 571-272-4430. The examiner can normally be reached on Mon - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dmitry Suhol  
Primary Examiner  
Art Unit 3725

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